
Mining & Hydraulic Supplies – Terms & Conditions of Trade

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “MHS” means Oncal Pty Ltd ATF Ken Fletcher Family Trust T/A Mining & Hydraulic Supplies, its successors and assigns or any person acting on behalf of and with the authority of Oncal Pty Ltd ATF Ken Fletcher Family Trust T/A Mining & Hydraulic Supplies.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting MHS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all Goods or Services supplied by MHS to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between MHS and the Customer in accordance with clause 6 below.
- 1.8 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 These terms and conditions may be meant to be read in conjunction with MHS’ Hire Form, and:
- (a) where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.3 These terms and conditions are to be read in conjunction with the “Australian Standard General Conditions of Tendering and Contract for General Engineering Works – Australian Standard No. CA24-1952”. However, the clauses herein shall take precedence.
- 2.4 All clerical and typographical errors and omissions shall be subject to subsequent correction in the quotation, and subsequent contracts between the parties shall at all times be deemed subject to this right on the part of MHS.
- 2.5 Unless otherwise stated in the quotation, all information contained in drawings, catalogues and other advertisement matter is intended merely to present a general idea of the Goods described therein, and all dimensions, weight and other particulars must be taken as approximate only. Certified drawings will be furnished if required. MHS reserves the right to amend specifications to such extent as may be thought fit by the manufacturer during the course of manufacture.
- 2.6 All Goods supplied and delivered under this contract will be completed strictly within the terms of the specifications and drawings, as referred to in the quotation. If the Customer should, for any reason, require any alteration or amendment thereto, such amendment and/or alteration shall be arranged and agreed upon in writing prior to commencement or during the currency of the contract. Furthermore, a Price allowance and amendment Delivery schedule shall have been agreed to by both parties in writing.
- 2.7 It is agreed that no employee or agent of MHS shall have the right or authority to assume or create any obligation of any kind, express or implied on behalf of MHS or to bind it in any respect whatever, except a duly elected officer of MHS who, acting within their authority, modifies this contract in writing, and this contract shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and MHS.
- 2.8 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.9 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.10 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with MHS and it has been approved with a credit limit established for the account.
- 2.11 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, MHS reserves the right to refuse Delivery.
- 2.12 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that MHS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by MHS in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by MHS in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of MHS; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

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4. Change in Control

- 4.1 The Customer shall give MHS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by MHS as a result of the Customer's failure to comply with this clause.

5. Authorised Representatives

- 5.1 The Customer acknowledges that MHS shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to MHS, that person shall have the full authority of the Customer to order any Works, and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to MHS for all additional costs incurred by MHS (including MHS's profit margin) in providing any Works, or variation/s requested thereto by the Customer's duly authorised representative.

6. Price and Payment

- 6.1 At MHS' sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by MHS to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to MHS' current price list; or
 - (c) MHS' quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. MHS reserves the right to refuse any order based upon the quotation within seven (7) days after receipt thereof.
- 6.2 MHS reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied (including any applicable plans or specifications) is requested; or
 - (b) in the event of increases to MHS in the cost of labour or materials which are beyond MHS' control.
- 6.3 Where a sketch, model or other experimental or preliminary Good is made or Services performed at the request of the Customer and if an order therefrom does not eventuate, the costs thereof will be charged to the Customer.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by MHS, which may be:
- (a) on Delivery;
 - (b) before Delivery;
 - (c) where the Price is over five thousand dollars (\$5000), by monthly instalments/progress payments as follows:
 - (i) during the manufacture, supply and/or erection: payment claims equalling up to ninety percent (90%) of the Price shall be submitted and payable within seven (7) days from the date of the claim; and
 - (ii) on Delivery: the full outstanding portion of the Price shall be due thirty (30) days following the date of the claim.
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is thirty (30) days following the end of the month in which an invoice/statement is posted to the Customer's address or address for notices.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, eftpos, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and MHS.
- 6.6 MHS may in its discretion allocate any payment received from the Customer towards any invoice that MHS determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer MHS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by MHS, payment will be deemed to be allocated in such manner as preserves the maximum value of MHS's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by MHS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to MHS an amount equal to any GST MHS must pay for any supply by MHS under this or any other agreement for the sale/hire of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery

- 7.1 Delivery of the Goods ("Delivery") is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at MHS' address; or
 - (b) MHS (or MHS' nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At MHS' sole discretion, the cost of Delivery is either included in, or is in addition to, the Price.
- 7.3 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery as arranged then MHS shall be entitled to charge a reasonable fee for redelivery of the Goods and/or the storage of the Goods.
- 7.4 MHS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time or date given by MHS to the Customer is an estimate only. The Customer must still accept Delivery even if late and MHS will not be liable for any loss or damage incurred by the Customer as a result of the Delivery being late.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

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- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, MHS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MHS is sufficient evidence of MHS' rights to receive the insurance proceeds without the need for any person dealing with MHS to make further enquiries.
- 8.3 If the Customer requests MHS to leave Goods outside MHS' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 8.4 The Customer is to procure and pay for any necessary permits and will be responsible for compliance with all local ordinances, state or federal laws with respect to the use and/or installation of the Goods.

9. Title

- 9.1 MHS and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid MHS all amounts owing to MHS; and
 - (b) the Customer has met all of its other obligations to MHS.
- 9.2 Receipt by MHS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to MHS on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for MHS and must pay to MHS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for MHS and must pay or deliver the proceeds to MHS on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of MHS and must sell, dispose of or return the resulting product to MHS as it so directs;
 - (e) the Customer irrevocably authorises MHS to enter any premises where MHS believes the Goods are kept and recover possession of the Goods;
 - (f) MHS may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of MHS;
 - (h) MHS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

10. Personal Property Securities Act 2009 ("PPSA")

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to MHS for Services – that have previously been supplied and that will be supplied in the future by MHS to the Customer.
- 10.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which MHS may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, MHS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of MHS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of MHS;
 - (e) immediately advise MHS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 MHS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by MHS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by MHS under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1 In consideration of MHS agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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- 11.2 The Customer indemnifies MHS from and against all MHS's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MHS's rights under this clause.
- 11.3 The Customer irrevocably appoints MHS and each director of MHS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
- 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 12.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify MHS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow MHS to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 MHS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MHS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. MHS's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, MHS's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If MHS is required to replace the Goods under this clause or the CCA, but is unable to do so, MHS may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, MHS's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by MHS at MHS's sole discretion;
 - (b) limited to any warranty to which MHS is entitled, if MHS did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) MHS has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, MHS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by MHS;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 MHS may in its absolute discretion accept non-defective Goods for return in which case MHS may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 12.11 Notwithstanding anything contained in this clause if MHS is required by a law to accept a return then MHS will only accept a return on the conditions imposed by that law.
- 13. Intellectual Property**
- 13.1 Where MHS has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of MHS. Under no circumstances may such designs, drawings and documents be used without the express written approval of MHS.
- 13.2 The Customer warrants that all designs, specifications or instructions given to MHS will not cause MHS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify MHS against any action taken by a third party against MHS in respect of any such infringement.
- 13.3 The Customer agrees that MHS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which MHS has created for the Customer.
- 14. Default and Consequences of Default**
- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at MHS's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes MHS any money the Customer shall indemnify MHS from and against all costs and disbursements incurred by MHS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MHS's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies MHS may have under this Contract, if a Customer has made payment to MHS, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by MHS under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 14.4 Without prejudice to MHS's other remedies at law MHS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to MHS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MHS becomes overdue, or in MHS's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by MHS;

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- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. Cancellation

- 15.1 Without prejudice to any other remedies MHS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions MHS may suspend or terminate the supply of Goods to the Customer. MHS will not be liable to the Customer for any loss or damage the Customer suffers because MHS has exercised its rights under this clause.
- 15.2 MHS may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice MHS shall repay to the Customer any money paid by the Customer for the Goods. MHS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by MHS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. Privacy Policy

- 16.1 All emails, documents, images or other recorded information held or used by MHS is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. MHS acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). MHS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by MHS that may result in serious harm to the Customer, MHS will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to MHS in respect of Cookies where transactions for purchases/orders transpire directly from MHS's website. MHS agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
 - (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to MHS when MHS sends an email to the Customer, so MHS may collect and review that information ("collectively Personal Information")In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via MHS's website.
- 16.3 The Customer agrees for MHS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by MHS.
- 16.4 The Customer agrees that MHS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 16.5 The Customer consents to MHS being given a consumer credit report to collect overdue payment on commercial credit.
- 16.6 The Customer agrees that personal credit information provided may be used and retained by MHS for the following purposes (and for other agreed purposes or required by):
 - (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.7 MHS may give information about the Customer to a CRB for the following purposes:
 - (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.8 The information given to the CRB may include:
 - (a) Personal Information as outlined in 16.3 above;
 - (b) name of the credit provider and that MHS is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that

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- the Customer no longer has any overdue accounts and MHS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of MHS, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.9 The Customer shall have the right to request (by e-mail) from MHS:
- (a) a copy of the Personal Information about the Customer retained by MHS and the right to request that MHS correct any incorrect Personal Information; and
- (b) that MHS does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 16.10 MHS will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 16.11 The Customer can make a privacy complaint by contacting MHS via e-mail. MHS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 17. Unpaid Seller's Rights**
- 17.1 Where the Customer has left any item with MHS for repair, modification, exchange or for MHS to perform any other service in relation to the item and MHS has not received or been tendered the whole of any monies owing to it by the Customer, MHS shall have, until all monies owing to MHS are paid:
- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 The lien of MHS shall continue despite the commencement of proceedings, or judgment for any monies owing to MHS having been obtained against the Customer.
- 18. Service of Notices**
- 18.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 19. Trusts**
- 19.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not MHS may have notice of the Trust, the Customer covenants with MHS as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Customer will not without consent in writing of MHS (MHS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 20. Construction Contracts Act 2004**
- 20.1 At MHS's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.
- 20.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.
- 21. General**
- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which MHS has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 21.3 Subject to clause 12, MHS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by MHS of these terms and conditions (alternatively MHS's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 MHS may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 21.5 The Customer cannot licence or assign without the written approval of MHS.

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- 21.6 MHS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of MHS's sub-contractors without the authority of MHS.
- 21.7 The Customer agrees that MHS may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for MHS to provide Goods to the Customer.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.